

## 37 Am. Jur. 2d Fraud and Deceit § 17

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### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

#### I. Overview

#### B. Nature and Effect

### § 17. Effect as vitiating transaction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

Fraud vitiates every transaction and all contracts,<sup>1</sup> and in fact, the principle is often stated in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments.<sup>2</sup> As a general rule, fraud will vitiate a contract notwithstanding that it contains a provision to the effect that no representations have been made as an inducement to enter into it, or that either party will be bound by any representation not contained therein, or a similar provision attempting to nullify extraneous representations. Such provisions do not, in most jurisdictions, preclude a charge of fraud based on oral representations.<sup>3</sup>

However, it is a general rule in the law of contracts that an agreement induced by fraud is voidable<sup>4</sup> and not void,<sup>5</sup> although the rule laid down in some cases is that fraud in the factum or execution renders the agreement void, whereas fraud in the treaty or inducement renders it merely voidable.<sup>6</sup>

#### Observation:

If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by one who is not a party to the transaction upon which the recipient is justified in relying, the contract is voidable by the recipient unless the other party to the transaction, in good faith and without reason to know of the misrepresentation, either gives value or relies materially on the transaction.<sup>7</sup> If a contract is voidable because of a misrepresentation and, before notice of an intention to avoid the contract, the facts come into accord with the assertion, the contract is no longer voidable unless the recipient has been harmed by relying on the misrepresentation.<sup>8</sup>

Generally, the right to avoid a contract induced by fraud must be exercised before the rights of third parties have intervened.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

As with a fraudulently induced contractual agreement, where the performance of a contractual agreement is fraudulently induced, the entire instrument—the whole contract—is rendered voidable at the instance of the defrauded party. [Devine v. Buki](#), 767 S.E.2d 459 (Va. 2015).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Trowbridge v. Oehmsen](#), 207 A.D. 740, 202 N.Y.S. 833 (2d Dep't 1924), [aff'd](#), 241 N.Y. 564, 150 N.E. 556 (1925); [Libhart v. Copeland](#), 949 S.W.2d 783 (Tex. App. Waco 1997).
- <sup>2</sup> [99 Pratt St. Corp. v. Stand Realty Corp.](#), 27 Conn. Supp. 101, 230 A.2d 613 (Super. Ct. 1966); [Berry v. Stevens](#), 1934 OK 167, 168 Okla. 124, 31 P.2d 950 (1934).
- <sup>3</sup> [Am. Jur. 2d, Contracts § 287](#).
- <sup>4</sup> [Am. Jur. 2d, Contracts § 214](#).
- <sup>5</sup> [Commissioner of Banks v. Cosmopolitan Trust Co.](#), 253 Mass. 205, 148 N.E. 609, 41 A.L.R. 658 (1925); [Ettlinger v. National Surety Co.](#), 221 N.Y. 467, 117 N.E. 945, 3 A.L.R. 865 (1917).
- <sup>6</sup> [Am. Jur. 2d, Contracts § 214](#).
- <sup>7</sup> [Restatement Second, Contracts § 164](#).
- <sup>8</sup> [Restatement Second, Contracts § 165](#).
- <sup>9</sup> [Am. Jur. 2d, Contracts § 570](#).